No. 01-760

Supreme Court, U.S.
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In The
Supreme Court of the United States

In Re: Summary Judgement of Race Discrimination Case

KELVIN J. HURDLE,
Petitioner.

v.

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Fourth Circuit

REPLY TO BRIEF IN OPPOSITION

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54pp

QUESTIONS PRESENTED

1. Has an African American established a prima faces case if his version of all that is in dispute is accepted and he has established that he was treated differently than whites similarly situated and the legitimate business reason given by defendant is shown by exhibits to be false?

2. Does the fact that the supervisor demands that the plaintiff to request compensation time after the discrimination complaint is filed and after the deadline for the completion of the annual report projects, support a discriminatory work environment for plaintiff, when whites similarly situated are allowed compensation time for annual reports during the annual report review period of March through August.

3. Is the continuing actor of discrimination sufficiently named if he is itemized in the original complaint and affidavits as upper management and is personally disposed to establish the respective fact?

4. Is the continuing actor of discrimination sufficiently named if a specific time and date is given in the original complaint pinpointing a meeting that directly noted the continuing actor of discrimination through quotations and he is directly named on the first appeal.

5. Are retaliatory employment acts such as mental cruelty or the fraudulent changing of documents that are severe and pervasive enough to effect and alter work performance, sufficient to be considered an adverse action of employment.

PARTIES TO THE PROCEEDING

Petitioner:

Kelvin J. Hurdle

Respondent:

Virginia Department of Environmental Quality

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OPINIONS BELOW

The opinions of the United States Court of Appeals for the Forth Circuit in Kelvin J. Hurdle, Plaintiff-Appellant, versus The Commonwealth of Virginia, Department of Environmental Quality, Defendant-Appellee are unpublished. These opinions were reproduced in the Appendix to Petition for Writ of Certiorari ("Pet. App."). Copies of the Material Facts that are in Dispute and e-mails to establish the truth of the statement of facts are submitted herewith at Appendix ("App.") pages 1-10; 24-29.

JURISDICTION

The United States Court of Appeals for the Forth Circuit filed its Mandate on the judgment entered by the court on 7/16/01. A timely filed Petition for Rehearing and Rehearing En Banc was denied on August 22, 2001. The Petition for Writ of Certiorari was filed within 90 days of the denial of the Petition for Rehearing and the Brief in Opposition to the Writ of Certiorari has been filed. The court's jurisdiction is invoked pursuant to 28 U.S.C §§ 1254 (1) and 2106.

STATUTORY PROVISIONS INVOLVED

This action is brought on behalf of Kelvin J. Hurdle seeking to implement the provisions of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e, *et seq.* This Court has subject matter jurisdiction pursuant to (a) 28 U.S.C. § 1331, because the case arises under the Constitution and laws of the United States; (b) 28 U.S. C. § 1343 because this action seeks redress and damages for violation of 42 U.S.C. § 1983 and 1985, and in particular, the due process and equal protection provisions of the United States Constitution, including the rights protected in the Fifth, Ninth and Fourteenth Amendments. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.

Venue is appropriate in this judicial district under 28 U.S.C. § 1391 (b), because Defendant is a state agency functioning in Richmond, Virginia, and a substantial part of the events giving rise to this Complaint occurred in Richmond, Virginia. Defendant the Department of Environmental Quality is a state agency maintained and funded in significant part by the Commonwealth of Virginia.

REBUTTAL TO RESPONDENT'S STATEMENT OF FACTS

A. "Hurdle" or "Petitioner" is an African-American male. He has been employed by DEQ since 1988, when he was hired as a Geologist. He was promoted in 1989 to the position of Geologist C, then again in 1996 to the position of Training and Development-Manager ("TD Manager"). 0n November 18, 1998, during an alleged reorganization of the DEQ, Hurdle was reassigned to the position of Environmental Engineer Senior. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq*. This Court has subject matter jurisdiction pursuant to (a) 28 U.S.C. § 1331, because the case arises under the Constitution and laws of the United States; (b) 28 U.S. C. § 1343 because this action seeks redress and damages for violation of 42 U.S.C. § 1983 and 1985, and in particular, the due process and equal protection provisions of the United States Constitution, including the rights protected in the Fifth, Ninth and Fourteenth Amendments. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345. Any reference to 42 U.S.C. § 1981 in original complaint was of typographical error. Clearly the original complaint stated that the cause of action was for violation of the fourteenth amendment rights and violating Title VII and Section 704(a) of the Civil Rights Act of 1964, as amended for engaging in protected activity.

B. The ("Respondent" or "DEQ") alleged that neither Hurdle's responses or Affidavits ("Aff's") or Exhibits "Exh" or deposition excerpts ("Depo.Tr.") contained any material facts that are in dispute. They also alleged that there wasn't any evidence that anyone at DEQ treated Hurdle differently because of race. The Appendices ("Material Facts that are in Dispute" reprinted at App. 1-10), ("Hurdle's Affidavit" reprinted at App. 17-23), ("Shelton's Affidavit" reprinted at App. 14-16), ("Depositional Excerpts-Plaintiff Discovery Designations" reprinted at App. 11-13), and (Factual E-mails relative to compensation time and the computer disc denied Hurdle reprinted at App. 24-29), all provide evidence that DEQ treated Hurdle differently relative to whites similarly situated.

C. Mr. David Paylor's depositional testimony page 9 lines 1-9, Page 11, lines 1-25 and the additional excerpts of Paylor's discovery designations proved that Mr. David Paylor was the manager that motivated the continued discrimination. Paylor's depositional testimony clearly showed that Paylor made the assessment that the training manager's " job was essentially administrative and was graded too high" when Mr. Hurdle was in the position. When Mr. Shelton was given the training manager's duties the grade level for the duties were ranked at a grade 16. Mr. David Paylor the manager that motivated the continued discrimination, also made comments to Mr. Hurdle stating to Mr. Hurdle that he was not going to have him making claims of racial discrimination. This event occurred while Mr. Hurdle was in his new position as Environmental Engineer Senior in December 1999. Hurdle raised this issue in the original complaint, and raised the respective issue on appeal. These facts clearly show that the demotion of Hurdle is clearly a related and continuing act of discrimination and is not a separate act and therefore is not time barred.

While working in the Environmental Engineering position, Plaintiff was consistently subjected to unequal terms and conditions of employment because of his race

black. A white co-worker also an Environmental Engineer reports to the same supervisor as the plaintiff. Plaintiff's Supervisor, allows Hurdle's white counterpart to work for overtime pay in order to complete projects. Yet plaintiff's requests for compensation time for overtime hours already worked and were routinely denied. Plaintiff's workload is greater than Maria Williams that was allowed compensation time for annual reports in July of 1999. Maria Williams was responsible for 25 annual reports and plaintiff was responsible for 76 annual reports. Plaintiff was required to request compensation time or not come into the office on 9/1/99 to review letters that pertain to the annual report. The supervisor knew that the annual reports were completed August 31, 1999 but demanded that plaintiff request compensation time. (Please see compensation time E-mails of appendix, App. 24-29). Defendant's actions violate Title VII of the Civil Rights Act of 1964, as amended.

The compensation timetable (App. 30-33) clearly showed that compensation time was issue for annual reports during the normal annual report project period but denied Hurdle. Hurdle only received compensation time after he filed a discrimination complaint August 26, 1999. Before that time however, Hurdle never received compensation time for any reason. In some instances as shown by the comp time chart in the submitted appendix (App. 30-33), whites similarly situated received comp time for annual reports and in some instances didn't have to have a reason to receive comp time. The respondent states that "specific reasons" or "out of the ordinary tasks" were required to receive comp time however, the comp time chart showed that whites similarly situated didn't have to have any reason and they did in fact receive comp time. The comp time chart in cross-reference with the e-mail (App. 30-33) clearly shows that Hurdle only received comp time for annual report letters not annual reports and received the comp time after the review period for annual reports was over.

D. DEQ intentionally denied Hurdle access to a computer disc that contained historical information helpful to the completion of Hurdle respective assignments. In accordance to DEQ's statement of fact, the district court assessed credibility to Freeland's affidavit, and determined that Freeland had no prior knowledge of Hurdle's claim of a request for computer disc. This statement clearly shows that the district court erred and assessed more credibility to Freeland affidavit than the complaint and affidavit of Hurdle. The respective e-mails in the submitted appendix (App. 24-29) clearly show a request for the computer disc that was copied to Freeland.

Hurdle was denied the disc by Shawn Davis and was denied by Freeland when he requested the respective disc for historical work information. Hurdle was never privilege to the computer disc however, he personally observed Mr. Jim Bernard receive the computer disc when Mr. Bernard first started in his similar new position. Such actions are clearly not workplace disputes. The District Court erred by viewing the Deficient Training, Supervisory Support, and Access to Tools of the Job in a more favorable light to the defendant. The evaluation of Mr. Hurdle with respect to his peers was primarily base on Freeland's Affidavit and ignored the depositional testimony of Mr. Hurdle page 79, lines 14-25 and page 80, line 1-25, and the deposition testimony of Freeland Page 15, Lines 12-25 and Page 16 lines 6-22; and Romanchik Page 17, lines 11-25 and Page 21, Lines 11-14.

E. The depositional excerpts of Mr. Dennis Treacy page 24 line 1-17 is evidence that Freeland was spoken to about his responses to Hurdle. These actions are proof that Freeland treated Hurdle differently. DEQ, never stated that Freeland was counseled or spoken to relative to comments made to white employees.

F. Hurdle clearly states in paragraph number 9 of the original complaint that DEQ's reluctance to talk to him about his Title VII concerns was a denial of due process and that whites were not treat the same when they wanted to discuss issues with management.

G. Plaintiff is frequently the target of derogatory comments by his supervisor. Plaintiff has on several occasions requested that his supervisor cease the use of derogatory comments. On or about May 17, 1999 the supervisor commented in a derogatory tone " I am going to whip you into shape". Within a month of that date, he commented " you don't have common sense". Other comments included " you have a warped mind", and "you don't have common sense". Nearly all-verbal communications by the supervisor are done with malice and in a condescending manner. Fraudulent actions taken by Freeland were documented and submitted to the court and were verified by handwriting expert Mr. Lawrence Farmer. (App. 36-37) These actions were not committed against white employees similarly situated.

REASONS FOR GRANTING THE PETITION

The Appropriateness of Defendants' Motion for Summary Judgment.

DEQ'S motion for summary judgement is only appropriate if there are no genuine issue as to any material fact, which would entitle defendant to judgement as a matter of law. Fed. R. Civ. P. 56(c). The ("Material Facts That are in Dispute") (*See* App. 1-10) clearly show issues of material fact that would not entitle defendant to a summary judgement as a matter of law. Since DEQ is the moving, the burden is on it to show the absence of any genuine issue of material fact.

The facts themselves, and the inferences to be drawn from the underlying facts, must be viewed in the light most favorable to Hurdle since he is the party opposing the

motion. The district court erred with the credibility determination relative to Freeland's affidavit. *Ross, Id.*, at 364. Only where it is "perfectly clear that there are no issues in the case" is summary judgement proper. As the nonmoving party, Hurdle is entitled to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, the most favorable of possible alternative inferences from the evidence drawn in his behalf; and to be given the benefit of all favorable legal theories invoked by the evidence as considered. *Ross* at 364.

Federal Rule of Civil Procedure 56(C) required that the Court enter judgement against a party who, "after adequate time for discovery ... fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.v. Catrett*, 477 U.S. 317, 322 (1966). The essence of the inquiry that the Court must make is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby. Inc.*, 77 U.S. 242, 251-52 (1986). Summary judgement is proper "if the evidence is such that a reasonable jury could [not] return a verdict for the nonmoving party." *Id.*, at 248. The Demotion Decision Claim Is Timely Because it Represents a Continuing Violation.

The defendant argues that Hurdle's claim that he was demoted for Training Manager's position because of his race is time barred because he filled this claim with the Equal Employment Opportunity Commission (EEOC) on February 9, 2000 which was more than 300 days after the demotion and occurred which was on November 1, 1998.

In order to avoid the "continuing violation" rule, defendant argues that the reassignment was "put into effect by John Cunningham, a black male, who is not implicated in Hurdle's claims of disparate treatment, hostile environment, and retaliation." This argument is without merit because

the complaint that is before the Court is based on a Title VII claim and the proper party in such a claim is the employer named in the EEOC Charge of Discrimination. *Mickel v. South Carolina State Employment Service*, 377 F.2d 239,242 (4th Cir. 1967), *cert. denied*, 389 U.S. 877, 88 S.Ct. 177, 19 L.Ed. 2d 166 (1967); *Alvarado v. Bd. Of T. of Montgomery Com. Coll.*, 848 F.2d 457 (4th Cir. 1988).

Defendant argues that the Fourth Circuit has not explicitly adopted a continuing violation test. This assertion is simply not true in light of the holding in *Brinkley-obu v. Hughes Training*, 36 F.3d 336 (4th Cir. 1994) in which the Court stated that "[a]long with the Supreme Court, we have applied the doctrine of continuing discrimination to Title VII, and Equal Pay Act compensation cases in which paychecks have been characterized as current or "continuing" violations. *Nelson v. Stone*, 958 F.2d 584, 592 (4th Cir. 1992); *Brewster v. Barnes*, 788 F2d 985, 993 (4th Cir. 1986); and *Jenkins v. Home Ins. Co.*, 635 F2d. 310, 312 (4th Cir. 1980)

Given the litany of events that Hurdle has experienced during his employment with the defendant and which he claims are discriminatory and/or retaliatory, the defendant's contention that the demotion and reassignment "simply constitute [d] the inevitable consequences of an earlier allegedly discriminatory decision do not suffice to create a continuing violation" is a factual determination that has been place in dispute by Hurdle in his response to the motion for summary judgement.

CONCLUSION

The evidence in the appendices submitted is overwhelming in opposition to a summary judgement for defendant in this Title VII case. DEQ intentionally denied Hurdle access to a computer disc that contained historical information helpful to the completion of Hurdle respective assignments. In accordance to DEQ's statement of fact, the district court assessed credibility to Freeland's affidavit, and

determined that Freeland had no prior knowledge of Hurdle's claim of a request for computer disc. This statement clearly shows that the district court erred and assessed more credibility to Freeland affidavit than the complaint and affidavit of Hurdle. Additionally, the Appendices clearly show that all the legitimate business reasons given for their discriminatory actions were false and therefore Hurdle has prevailed on establishing a prima facie case but was denied due process. There exist overwhelming evidence that the reasons taken for the employment actions at issue are false and thus, there is an inference of discrimination could be reasonable drawn. Freeland states that he had no knowledge of Hurdle's request for historical information on disc. E-mails prove that this statement to be clearly false. (App. 24-29) DEQ alleged compensation time is not given for annual reports. The compensation time chart submitted clearly shows this statement to be false. For these reasons, the judgment of the Fourth Circuit Court of Appeals contains multiple errors and must be reversed.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

KELVIN J. HURDLE,
Plaintiff,

v. **Civil Action No. 3:00cv336**

COMMONWEALTH OF VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
Defendant.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Comes now Kelvin Hurdle ("Hurdle") by and through his counsel and files herewith his opposition to defendant Commonwealth of Virginia Department of Environmental Quality's (DEQ), motion for summary and in support contends that the record reveals that there are genuine disputes as to material facts and therefore the defendant is not entitle to judgment as a matter of law.

MATERIAL FACTS THAT ARE IN DISPUTE

1. &4 states that Hurdle's reassignment was completed in accordance with state policy o layoff. Response: Hurdle was minimally qualified for the Environmental Engineer Consultant position, which was a grade 14 and was vacant and he should have been laterally transferred rather than being demoted to a grade 13. Hurdle's minimal qualifications were more extensive than what was contained in his written KSA because his knowledge and experience as an Environmental Engineer Senior gave him more than the minimal qualifications for the Environmental Engineer Consultant position.

2. &5 states that Hurdle told Cunningham that he wanted to work for another black employee, Wes Motley. Response: Hurdle denies stating this to Cunningham.

3. &6 states that Hurdle told Howard Freeland that he hand made a career decision to get out of the technical field and that he did not want the assignment in waste permitting. Response: Hurdle denies stating this to Freeland.

4. &8 states that Freeland reported Hurdle's absence from several sessions at a training conference in Florida to Hurdle's boss. Response: There was only one session that Hurdle did not attend at the training conference. Freeland also missed one training session, but no one said that his absence reflected poorly o DEQ and wasted agency funds.

5. It also states in the ▯ 8 that Freeland and Hurdle often discussed their mutual interest in cars. Response: Hurdle recalls that he and Freeland only discussed cars on two separate occasions.

6. &9 states that Freeland had better rapport with permit writers Bernard and Syverson, who enjoyed unrequested interaction. Response: Hurdle, unlike Bernard and Syverson, both of whom are white, was not given permit amendment training for more than a year after he joined Freeland's unit. Bernard and another white permit writer, Jeff Christie, were given this training immediately upon their assignment to the unit. Moreover, their permit amendment assignments gave them overtime opportunities, which Freeland denied to Hurdle.

7. &10 states that Hurdle's workload was average and it was not higher than that of either Larry Syverson or Shawn Davis, two white males in the section. Response: Hurdle agrees with this point. However, Syverson and Shawn Davis had far more experience than Hurdle because they had been in the Solid Waste Permitting unit for more than five years. Despite their greater experience tenure, Hurdle's workload was comparable

within two months of his transfer into this unit. This is in contrast to Freeland's treatment of Bernard and Christie who he gave reduced workloads during the first eight months they were assigned to the unit.

8. &12 states that Freeland required Maria Williams, a white female, to make up her missed time due to lateness. Response: Freeland required that Hurdle use his annual leave time to make up for his lateness.

9. &14 states that in the Summer of 1999, Freeland gave Hurdle an interim evaluation and that Hurdle did not grieve this evaluation. Response: Hurdle filed a discrimination charge with the State EEO office regarding this evaluation in August 1999. The basis of the charge was that Freeland had no facts to document or support this interim evaluation and refused to provide any support when requested by Hurdle.

10. &15 states that Hurdle is unsure whether Larry Syverson received comp time for annual report work. Hurdle did not concede this in his deposition. Response: Hurdle testified that Syverson told him in specific and unequivocal language that he received comp time for doing annual reports. It is important to note that neither Romanchik nor Freeland denied that Syverson received comp time in their affidavits.

11. &16 states that Freeland refused to pay Hurdle for the extra time he had worked. Response: Hurdle never asked Freeland to pay him for the over time he worked. Hurdle only asked for comp time despite the fact that Syverson told Hurdle that he was receiving over time pay.

12. &17 states that o September 23, 1999, Freeland completed Hurdle's annual evaluation and graded him as " FAIR BUT NEEDS IMPROVEMENT", and that Hurdle negotiated with Freeland and successfully got Freeland to raise several elements of the evaluation. Response: When Hurdle confronted Freeland with respect to the evaluation, Freeland admitted that he had not given

Hurdle adequate training. Freeland told Hurdle that he could not make changes in the evaluation without Romanchik's approval. Freeland and Hurdle then met with Romanchik and she agreed to change some of the areas in the evaluation. However, the overall evaluation was not changed.

13. &18 states that Cunningham observed that the training program was stalling under Hurdle's direction. Response: This statement was attributed to ¶14 in Cunningham's affidavit. Cunningham did not make this representation. He said that Hurdle's "career was stalling in the training manager's position and the reassignment to waste permitting was an opportunity for him to return to substantive work for the agency". It is interesting to note that in order to "unstall" Hurdle's career; Cunningham demoted Hurdle rather that grant his request for a lateral transfer.

14. &20 states that in the Fall of 1999, during the review of this evaluation, Paylor did not direct Hurdle not to tell people he was the victim of discrimination. Response: Hurdle took the encounter with Paylor as a direct threat about his accusations that he was a victim of racial discrimination by Freeland and Romanchik.

15. &24 states that Freeland asked Hurdle about his progress on drafting the First Piedmont amendment and that Hurdle told him that he did not know what a draft permit was. Freeland reminded Hurdle of the prior Shoosmith permit. Response: Freeland gave Hurdle his first draft permit amendment on April 14, 2000. Prior to that date, Hurdle had never done a draft permit amendment and had no training on this particular kind of project. The Shoosmith permit that Freeland referenced was not a permit amendment but was an annual report. Moreover, Shoosmith was a sanitary landfill and was in no way related to the First Piedmont project, which was an industrial landfill.

16. &25 states that on April 17, 2000, Freeland became frustrated and asked Hurdle to leave his office and that at a point in the discussion, Hurdle all of a sudden stated grinning and stood up and indicated that he wanted to shake hands with Freeland. Because nothing had been settled, Freeland thought that the handshake was an attempt to smooth over Hurdle's errors and was not a genuine agreement to try to do better work. Response: When Hurdle offered to shake hands with Freeland following a meeting in which Freeland became extremely emotional and testy, his gesture was a genuine attempt to diffuse and neutralize the situation not to make light of the incident. Freeland refused the gesture and did not shake Hurdle's hand.

17. &27 states that Hurdle would not make a decision on an issue with the Shoosmith landflll until Freeland told him, at least three times, to do so. Response: Hurdle did not refuse to make a decision with respect to the Shoosmith landfill. Hurdle's delay in reaching a decision was caused by Freeland's disagreement with Hurdle's review and position on this project.

18. &29 states that Freeland met with Hurdle on May 31, 2000 and June 6, 2000, at Hurdle's request. Response: Hurdle requested a meeting with Freeland and Romanchik on April 14, 2000 to discuss an interim evaluation in which Freeland rated Hurdle as "DOES NOT MEET EXPECTATIONS" in all categories. Hurdle filed suit against the agency on May 26, 2000 and almost immediately thereafter the two meetings were held. Hurdle believes that these meetings were not in good faith, but as a direct response to the law suit.

19. &31states that a Freeland issued a counseling memo to Hurdle on July 28, 2000 for intentionally failing to attend a very important meeting called by his colleague Maria Williams. With respect to the meeting that Hurdle did not attend, this meeting was held on June 13, 2000 and Maria Williams sent an E-mail advising that attendance was not mandatory. Hurdle did not attend the meeting because

he was working on the First Piedmont permit amendment that Freeland advised was a high priority project. Hurdle felt that his time would be better spent working on the amendment rather than attending the meeting.

20. &32 states that Freeland supported his evaluation of Hurdle on September 12, 2000 as "DOES NOT MEET EXPECTATIONS" in all categories by providing 16 examples of unsatisfactory customer service and documentation of poor commitment to the DEQ and copies of 30 annual report letters completed by Hurdle that contained more than one error per draft letter. Response: Freeland provided Hurdle with a mentor, Larry Syverson who was the most senior staff person working under Freeland. All of the negative findings that Freeland referenced in supporting his evaluation of Hurdle were reviewed by Syverson before they were submitted. Syverson did not bring any of the observations made by Freeland to Hurdle's attention before Hurdle submitted his work. With respect to the First Piedmont permit, Syverson specifically told Hurdle that since no one from the public attended the public hearing other than the permittee, First Piedmont, that no public comments were required. Hurdle relied on his assumption that Syverson would have pointed out any problems with his work. With respect to Freeland's comment that Hurdle had not entered or attempted to enter any data for four months prior to his evaluation, Hurdle states that his attempts to enter data were unsuccessful because he was not issued a proper pass word to gain access to the data bank despite his many complaints to Freeland during the four-month period. Hurdle has since been given a password and had entered data as necessary. Hurdle also sent a detailed rebuttal to September 12, 2000. (Exhibit 1).

21. &34 states that Freeland does not recall telling Hurdle he "would whip him into shape"; that Freeland does not remember saying to Hurdle. "I will not have a child working for me"; that Freeland does not recall making the comments "you do not have common sense or

you are not professional." Response: Hurdle specifically recalls these incidents and that Freeland intended to demean and embarrass him when they were said.

22. &36 states that Hurdle had an unapproved outside job. Response: Hurdle consistently filed with the Agency a conflict of interest form in which he revealed his outside business interests. He thought that this was all that he was required to do. In 1999, Hurdle was told that he was required to complete a specific form regarding his outside business and he did so and it was approved.

23. &37 states that in September 2000, Larry Syverson asked Hurdle to inventory his office of his pending work projects so that they could discuss his workload and Hurdle refused more than once to do this, claiming his papers were being tampered with and that on October 23, 2000, Syverson issued Hurdle a Group II disciplinary notice for failing to follow his supervisor's instructions, with no accompanying suspension. Response: Hurdle filed a grievance with respect to the Group II notice and the grievance is presently pending. This issue came up after Hurdle designated in this lawsuit a handwriting expert who opined that a written notation made on a document was done by Freeland. Freeland had accused Hurdle of making this notation. Hurdle was then told that he was the subject of an investigation that could lead to criminal charges against him for making other notations in files he was working on so that he would not have to do required work.

24. &Hurdle was concerned that he was being set up with regard to certain files that were in his office and requested that Syverson review these files himself in order to avoid an accusation that he, Hurdle, tampered with these files. Hurdle's refusal to follow Syverson's instructions was intended to protect himself not to disregard a legitimate instruction by his supervisor.

25. Joseph F. Shelton was employed by the Department of Environmental Quality (DEQ) from September 10, 1997 until December 24, 1998, when he voluntarily resigned from the Agency. Shelton Aff. &1.

26. In his first position at DEQ, Shelton held the title of Division Director of Administrative Support, which was a pay grade 17 position. In this position, he reported to the Director of the DEQ. Shelton Aff. &2.

27. At the time Shelton assumed these duties, the plaintiff, Kelvin Hurdle, was assigned in the position of Training Manager which was pay grade 14 position. Hurdle was however on temporary assignment in the Underground Storage Tanks unit. Hurdle returned to Training Manager's position in early December 1997. Shelton Aff. &3.

28. In the Summer of 1998, as a result of a reorganization, Shelton's position was abolished and he was demoted to Director of Human Resources, which was a pay grade 16 position. At the time of his demotion, Shelton's pay was not reduced, however, the ceiling for future pay increases were lower than it was in pay grade 17. In this position he reported to John E. Cunningham Jr., the Director of Administration. Shelton Aff. &4.

29. On or about September 30, 1998, Shelton found out that DEQ was advertising for his position. He had not been advised that he was being replaced and was shocked when he learned about this. Shelton Aff. &5.

30. At that time, Hurdle was in Shelton's office and they were discussing training. Hurdle said to Shelton, "I bet you that they are going to reassign you to my job, Training Manager." Shelton Aff. &6.

31. Cunningham came to Shelton's office and Shelton asked him what he had done to deserve this treatment. Cunningham asked Shelton to come up to his office so they could discuss the matter. Shelton Aff. &7.

32. Shelton went up and talked with Cunningham and Cunningham told Shelton that he was going to demote him and give him the position as Training

Manager, pay grade 14. Cunningham said that Shelton would not loose any current pay, but the pay grade position had a maximum salary that was at or near his present salary as a pay grade 16. Shelton Aff. &8.

33. Shelton asked Cunningham what was going to happen to Hurdle. Cunningham said that he was going to move Hurdle but did not say where. Shelton Aff. &9.

34. Hurdle later told Shelton that a position had been created for him in the waste permit unit at a pay grade 13. Shelton Aff. &10.

35. Before Shelton's reassignment took effect, Shelton was told that the Department of Personal Training (DPT) had contacted Cunningham and he was told that he did follow procedure in demoting and reassigning Shelton and that there were no grounds to demote Shelton because his evaluations were that his performance fully met expectations. Shelton Aff. &11.

36. On or about October 16, 1998, Cunningham advised Shelton that he was not going to be demoted and that a position was being created for him, Environmental Quality Assistant Division Director in the Division of Administration at pay grade 16, effective October 19, 1998. Shelton Aff. &12. Exhibit 1, Cunningham Aff. Encl. III.

37. The duties in this position consisted almost exclusively of those duties that Hurdle performed as Training Manager. Shelton Aff. &13.

38. At this time Shelton was placed in that position, he had no experience at DEQ as a Training Manager, except as the supervisor the position. In fact, Hurdle could have carried out the duties in this position. Shelton Aff. &14.

39. On or about October 7, 1998, Shelton prepared an evaluation on Hurdle for his performance as Training Manager. Shelton rated Hurdle's performance that he fully met expectations. Shelton Aff. &15.

40. Cunningham signed and approved the evaluation on October 28, 1998. Cunningham did not mention or say to Shelton that he thought Shelton's evaluation of Hurdle was "inflated," nor did Cunningham make any comments on the evaluation, which he had every right to do. Shelton Aff. &16. Exhibit 17, Hurdle Tr., Encl. I.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

KELVIN J. HURDLE.
Plaintiff,

v. Civil Action No. 3:00cv336

COMMONWEALTH OF VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
Defendant.

PLAINTIFF'S DISCOVERY DESIGNATIONS

Comes now the plaintiff, Kelvin Hurdle, by and through his counsel an submits his designations to the discovery taken in the above styled case as follows:

Deposition Testimony of Dennis H. Treacy:

Page 3, Lines 3-13
Page 23, Lines 23-25
Page 24, Lines 1-17
Page 27, Lines 20-25
Page 28, Lines 12-20
Page 36, Lines 3-25
Page 37, Lines 2-6, 19-23
Page 38, Lines 8-25
Page 16, Lines 6-22
Page 18, Lines 10-18
Page 57, Lines 10-24
Page 58, Line 1-2
Page 69, Lines 4-11, 24-25
Page 70, Lines 1-5
Deposition Testimony of David Paylor:
Page 10, Lines 8-25
Page 11, Lines 1-25

Page 14, Lines 14-25
Page 15, Lines 1-19
Page 30, Lines 15-25
Page 31, Lines 1-6
Deposition Testimony of
Leslie A. Romanchik:
Page 5, Lines 5-14
Page 15, Lines 22-25
Page 17, Lines 11-25
Page 21, Lines 11-14
Page 23, Lines 1-12
Page 24, Lines 8-25
Page 26, Lines 1-25
Page 27, Line 1
Page 28, Line 25
Page 29, Lines 1-2
Page 30, Lines 2-24
Page 31, Lines 11-23
Page 32, Lines 15-25
Page 33, Lines 1-8
Page 39, Lines 19-25
Page 40, Lines 1-3
Page 43, Lines 7-25
Page 44, Lines 1-18
Page 46, Lines 13-25

Respectively submitted,

KELVIN J. HURDLE

By /s/Beverly D. Crawford
Of Counsel

Beverly D. Crawford, Esquire
4221 Chamberlayne Avenue
Richmond, Virginia 23227

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was mailed postage pre-paid to Martha M. Parish, Esquire, Assistant Attorney General, 900 East main Street, Richmond, Virginia 23219, on this 21st day of November 2000.

/s/Beverly D. Crawford

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

KELVIN J. HURDLE,
Plaintiff,

v. Civil Action No. 3:00cv336

COMMONWEALTH OF VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
Defendant.

AFFIDAVIT OF JOSEPH F. SHELTON

Joseph F. Shelton, having been duly sworn, says:

1. My name is Joseph F. Shelton. I was employed by the Department of Environmental Quality (DEQ) from September 10, 1997 until December 24, 1998, when I voluntarily resigned from the Agency.

2. In my first position at DEQ, I held the title of Division of Administrative Support which was a pay grade 17 position. In this position, I reported to the Director of the DEQ.

3. At the time I assumed these duties, the plaintiff, Kelvin Hurdle, was assigned in the position of Training Manager which was a pay grade 14 position. Kelvin was however on temporary assignment in the Underground Storage Tanks unit. Kelvin returned to the Training Manager's position in early December 1997.

4. In the Summer of 1998, as a result of a reorganization, my position was abolished and I was demoted to Director of Human Resources which was a pay grade 16 position. At the time of my demotion, my pay was not reduced, however, the ceiling for future pay increases was lower than it was in pay grade 17. In this position I

reported to John E. Cunningham, Jr. the Director of Administration.

5. On or about September 30, 1998, I found out that DEQ was advertising for my position. I had not been advised that I was being replaced and was shocked when I learned about this.

6. At that time, Kelvin was in my office and we were discussing training. Kelvin said to me, "I bet you that they are going to reassign you to my job, Training Manager."

7. Cunningham came to my office and I asked him what I had done to deserve this treatment. Cunningham asked me to come up to his office so we could discuss the matter.

8. I went up and talked with Cunningham and he told me that he was going to demote me and give me the position as Training Manager, pay grade 14. He said that I would not lose any current pay, but the grade 14 position had a maximum salary that was at or near my present salary as a pay grade 16.

9. I asked Cunningham what was going to happen to Kelvin. He said that he was going to move Kelvin but did not say where.

10. Kelvin later told me that a position had been created for him in the waste permit unit at a pay grade 13.

11. Before the reassignment that was told to me by Cunningham took effect, I was told that the Department of Personnel and Training (DPT) had contacted Cunningham and told him he did not follow procedure in demoting and reassigning me and that there were no grounds to demote me because my evaluations were that my performance fully met expectations.

12. On or about October 16, 1998, Cunningham advised me that I was going to be demoted and that position was being created for me, Environmental Quality Assistant Division Director in the Division of Administration at pay grade 16, effective October 19, 1998.

13. The duties in this position consisted almost exclusively at those duties that Kelvin performed as Training Manager.

14. At the time I was placed in that position, I had no experience at DEQ as a Training Manager, except as the supervisor of the position. In fact, Kelvin could have carried out the duties in this position.

15. On or about October 7, 1998, I prepared an evaluation on Kelvin for his performance as Training Manager and I rated that his performance met expectations.

16. Cunningham signed and approved the evaluation on October 28, 1998. Cunningham did not mention or say to me that he thought my evaluation of Kelvin was "inflated" nor did he make any comments on the evaluation which he had every right to do.

Upon my oath, and under the penalty of perjury, I state that my foregoing statements are true and accurate.

Date /s/Joseph F. Shelton
Joseph F. Shelton

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

KELVIN J. HURDLE,
Plaintiff,

vi. Civil Action No. 3:00cv336

COMMONWEALTH OF VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
Defendant.

AFFIDAVIT OF KELVIN HURDLE

Kelvin Hurdle, having been duly sworn, says:

1. I am the plaintiff in the above styled case.

2. The responses that were made in Paragraphs 1 through 24 in the Material Facts That Are in Dispute section of Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment are true and accurate.

3. In June 1998, I attempted to join in with a few HRO staff in a normal discussion. Caroll Harris, a white female of DEQ/HRO, whose position is unknown, called me "boy" and when I looked incredulously at her, she repeated it. I told Joe Shelton about the incident and he aid he would speak to her about it.

4. White staff have received personal faxes in the office and no action was taken against them. However, when I received a personal fax at the office, Howard Freeland gave me a written reprimand which caused me to be embarrassed, humiliated and depressed.

5. During the time I was under Howard Freeland's supervision, he created a hostile work environment. Nearly all of Freeland's verbal communication with me were done in a malicious and condescending

manner. I constantly had to ask Freeland to calm down when he interacted with me. It was rare when Freehand was not hostile and argumentative toward me. Freeland's interaction with white staff was completely different in that he communicated with them in a calm and pleasant demeanor.

6. Examples of Freeland's derogatory comments directed at me are: He has said, "I'm going to whip you into shape". On or about May 17, 1999, he said to me, ""You have a warped mind." I do not recall the date of the last comment.

7. Freehand treated me differently form white coworkers regarding my arrival time at work. Freehand almost daily monitored my time of arrival at work. When I was fifteen minutes late, Freehand required me to fill out a leave request and charged my lateness to my accrued leave, while white staff were allowed to make up their late arrival by working the additional time at the end of the day and their annual leave was not used to make up for their late arrival.

8. Freehand told me on several occasions that he did not have time to discuss my work acting as if he was too busy to engage me in positive and productive discussions. Immediately after saying this to me, I watched him fraternizing with white male staff for a considerable length of time, which indicated that he was not too busy. When Freehand saw me watching him fraternizing, he would shut his office door.

9. The agency maintains a computer system on which is stored historical information regarding previous work done by the agency. This information is important in the work we do at the agency and it greatly simplifies a lot of the work we do. When I requested Freehand to allow me access this information to assist me in working on my assigned projects, he regularly refused my requests. My requests were made orally and in writing. My white coworkers were given access to this information.

10. One example of this occurred when Jim Bernard, a white male, was given access to this information within a week after he arrived at the agency. When I mentioned this to Bernard and told him that I had been denied access to this same information, he acted surprised and told me that he put the information in a common file that did not require limited access.

11. On July 27, 2000, Bernard and I were traveling to Chatham, Virginia for a public hearing. During the trip, Bernard said to me without any prompting from me that he really believed that Howard Freehand is a racist. He said he came to that conclusion because Freehand treated me different from the way he treated my white coworkers.

12. From December 1998 to June 2000, there was a practice at the agency or at least in the department in which I worked to give all employees job training, Freehand refused to assure that I was given adequate training. For example, Freehand would set up specific training protocols for whites to assure that they were trained in specific areas of their duties and responsibilities. He would monitor their training progress. Freehand refused to do the same for me. In fact, Freehand would instruct me to do specific project knowing full well that I had not received any training in that area. My employment was adversely affect because it took far more time to do the work that would have been necessary had I been given proper training. During the same time period, when whites first came to the department, they were assigned a mentor. I was in the department for more than eighteen months before Freehand got around to assigning me a mentor.

13. From December 1998 to the present, Freehand refused to approve compensatory time to offset the excessive time that I needed to complete my assigned projects, while he approved compensatory time for white staff on a regular and consistent basis.

14. From March 1999 to the present, from time to time I would find inadequate monitoring system for land

fills in the State. When I made this observation in my report, Freehand took issue with my findings and ordered me to reverse my opinion and certify that the monitoring system was working properly. He did this without giving or explaining to me a scientific justification as to why my observation and conclusion was wrongs.

15. When Freehand dealt with my white coworkers and reversed their findings and observations, he gave them a detailed scientific explanation. This was not simply a difference in his attitude and demeanor toward me, but he also deprived me of valuable training because by explaining his reasoning as he did with my white coworkers he provided them with an opportunity to learn from their mistakes and to have positive feed back regarding their work.

16. From December 1998 to September 1999, Freehand intentionally created a communication barrier during my first months on the job, effectively reducing the quality of my training. No training plan was ever devised, presented or reviewed with me. Although an overall plan was presented to HRO, its detail were never reviewed. In contrast, quality training time was spent with new white employees this year,

17. There were several acts of retaliation that occurred as follows:

a. After I was evaluated as meeting the requirements of the job, I was removed from the training managers position in December 1998 and demoted.

b. On May 31, 2000, I was given an interim performance evaluation which stated that I did not meet the requirements of my position. My federal complaint was filed on May 26, 2000 and served on the Department that same day. The Department and Freehand were aware of the Complaint before the interim performance was prepared.

c. On June 8, 2000, I was given a counseling memo for alleged poor performance.

d. On July 28, 2000, I received a counseling memo for not attending a non-mandatory meeting on June 13, 2000, which was six weeks prior to the incident. The memo was given one day after I attended a pretrial conference with Judge Payne, during which he advised the Department to find me a job with another agency. Immediately after the pretrial conference, I saw and spoke with the Department's Director, Dennis Tracey who was in the Court House. During my previous encounters with Tracey, he was always friendly, however on July 27, 2000, when he spoke briefly in the Court House, he appeared drawn and distant toward me.

e. Freehand fraudulently changed a notation on a Report Cover Sheet, Tracking ID WP200 1003 with a response date of 8/24/00 that I prepared. I put on the sheet the word "Yes" in the block indicating whether a response was due to the letter received. On this sheet there was a circle drawn around the word "Yes" and a line drawn from the circle to the center of the sheet where another circle was drawn around the word "No."

f. Freehand alleged that I made the handwritten entry and wrote the word "No" on the sheet when in fact he was the one that did this.

g. Freehand then reprimanded me for an act that he committed and repeated his false and fraudulent accusation in the presence of Leslie Romanchik on August 11, 2000.

h. I notified Romachick and Freehand regarding this on or about September 7, 2000.

18. Joe Shelton, my supervisor when I was training manager, told me that upper management had discussed removing me from the training manager position, and could not give him a reason for the action.

19. When I asked for the legitimate, business reason for demotion, I received no answer.

20. There were also some peculiar and questionable circumstances surrounding my demotion, because at the time of my demotion, Joe Shelton was in the position of Director of Human Resources, which was a Level 16 position.

21. He told me that he was told by John Cunningham, Director of Administration that he was being taken out of his Human Resources position and would assume my duties as Training Manager which was a Level 14 position, at least when I performed those duties.

22. Shelton complained that if he assumed those duties, it would mean that he was going to receive a two level demotion from a Level 16 to a Level 14.

23. Cunningham then made arrangements to have Shelton's new position changed from Training Manager to Assistant Director of Administration and the position was given a Level 16 designation.

24. At the time of my demotion, I received a satisfactory performance evaluation and I met all of the requirements for the position. I was better qualified than Shelton to continue the duties as Training Manager because Shelton had absolutely no experience or training for that position.

25. Also, there was an existing vacancy in the Department for an Environmental Engineer, Level 14. I was minimally qualified for that position. I was not considered for that position despite the fact that there is a policy and practice in the Department that requires that prior to demoting an employee, that an attempt be made to laterally move that employee to a position vacancy where that employee is minimally qualified. This policy was not exercised in my case, while it was exercised for Shelton's benefit.

Upon my oath, and under the penalty of perjury, I state that the my foregoing statements are true and accurate.

Date /s/ Kelvin Hurdle
Kelvin Hurdle

To: Kelvin J. Hurdle@GCA@DEQ
Cc:
Bcc:
From: Shawn E. Davis@GCA@DEQ
Subject: re: Facility letters
Date: Friday, August 6, 1999 8:59:40 EDT
Attach:
Certify: N
Forwarded by:

Kelvin,

Copies of all my letters are in the facility file along with the facility submittals. You really need to read both to understand the situations. Regardless, I'm leaving an electronic copy of all my letters for SW & HW with Howard. Also, I will leave my personal files behind so that whomever is assigned my projects can use them or trash them. Later Tater.

To: Shawn E. Davis@GCA@DEQ
Cc: Howard R. Freeland@GCA@DEQ
Bcc:
From: Kelvin J. Hurdle@GCA@DEQ
Subject: re: Facility letters
Date: Friday, August 6, 1999 8:52:48 EDT
Attach:
Certify: N
Forwarded by:

How about giving me a copy of the database of letters that you have. Specifically, the letters that pertain to the sites that you have turned over to me.

Thanx!

To: Kelvin J. Hurdle@GCA@DEQ
Bcc:
From: Howard R. Freeland@GCA@DEQ
Subject: annual reports
Date: Wednesday, August 25, 1999 15:04:36 EDT
Attach:
Certify: N
Forwarded by:

According to my records, 5 annual report reviews were completed and so far for this week 2 annual reports have been reviewed. Since Shawn gave you 25 before you left and Larry has done two of those, I'm guessing that you have about 16 left to do. Is that right?

As you know all annual reports must be reviewed by 9/1/99. That only leaves 4 working days and 40 hours left for completion of the reports.

I'll be out of the office tomorrow, but please let me know by email by Friday the status. Don't spend much time on it, I just need to know numbers.

To: Howard R. Freeland@GCA@DEQ
Cc:
Bcc:
Fr: Kelvin J. Hurdle@GCA@DEQ
Subject: re: annual reports
Date: Tuesday, August 31, 1999 11:34:58 EDT
Attach:
Certify: N
Forwarded by:

Just thought I let you know that Lee Co. is now my last annual report to review. You said we are to discuss it.

To: Howard R. Freeland@GCA@DEQ
Cc: Leslie A. Romanchik@OPM@DEQ
Bcc:
Fr: Kelvin J. Hurdle@GCA@DEQ
Subject: Comp time/and leave taken
Date: Thursday, September 2, 1999 7:55:41 EDT
Attach:
Certify: N
Forwarded by:

As per your request, I sent you an e-mail yesterday stating that I will be earning 8 hrs. comp time of 9/1 and taking 10 hrs leave for 9/2.

I have touched base with you today to make sure all paperwork is appropriate. Your comments were that "we are all straight as for as my time is concern". If there are any "time issues" that we must discuss please let me know.

Now, that the annual reports are done, and I am allowed to earn comp time, can you please tell me what the desired procedure should be?

To: Howard R. Freeland@GCA@DEQ
Cc:
Bcc:
Fr: Kelvin J. Hurdle@GCA@DEQ
Subject:
Date: Wednesday, September 1, 1999 10:26:43 EDT
Attach:
Certify: N
Forwarded by:

I am going to work 8 hr comp time today and turn in 10 hours annual leave for Thursday.

COMMONWEALTH OF VIRGINIA
SARA REDDING WILSON
Department of Human Resources Management
Exhibit II

Employee Name	Race	Position Title	Date and Amount of Compen-satory Time Granted	Reason for Granting Compen-satory Time
Kelvin J. Hurdle	B	Env. Eng. Sr.	09/01/99 8.0 hours	Letter pertaining to annual reports
Larry Syverson	W	Env. Eng. Sr.	02/03/99 2.4 Hours	On site sampling in Bedford County
Larry Syverson	W	Env. Eng. Sr.	02/04/99 2.0 Hours	On site sampling in Bedford County
Larry Syverson	W	Env. Eng. Sr.	02/09/99 5.5 Hours	On site sampling in Bedford County
Larry Syverson	W	Env. Eng. Sr.	02/16/99 4.0 Hours	Caroline County Landfill Public Hearing
Larry Syverson	W	Env. Eng. Sr.	02/2/99 1.5 Hours	Reports for Solid Waste
Larry Syverson	W	Env. Eng. Sr.	02/23/99 1.0 Hours	OSHA Training
Larry Syverson	W	Env. Eng. Sr.	04/20/99 4.0 Hours	Public Hearing

Larry Syverson	W	Env. Eng. Sr.	05/10/99 5.5 Hours	Public Hearing
Larry Syverson	W	Env. Eng. Sr.	06/15/99 1.0 Hour	Public Hearing
Larry Syverson	W	Env. Eng. Sr.	06/16/99 6.0 Hours	Public Hearing
Larry Syverson	W	Env. Eng. Sr.	06/17/99 4.0 Hours	Public Hearing
Larry Syverson	W	Env. Eng. Sr.	06/22/99 8.0 Hours	Public Hearing
Larry Syverson	W	Env. Eng. Sr.	07/14/99 3.0 Hours	Public Hearing
Larry Syverson	W	Env. Eng. Sr.	07/15/99 4.5 Hours	Public Hearing
Maria Williams	W	Env. Eng. Sr.	01/06/99 3.0 Hours	
Maria Williams	W	Env. Eng. Sr.	02/02/99 5.0 Hours	Bedford County Split Sampling
Maria Williams	W	Env. Eng. Sr.	02/03/99 3.0 Hours	Bedford County Split Sampling
Maria Williams	W	Env. Eng. Sr.	02/05/99 11.0 Hours	Bedford County Split Sampling
Maria Williams	W	Env. Eng. Sr.	03/24/99 5.0 Hours	Public Hearing
Maria Williams	W	Env. Eng. Sr.	05/21/99 10.0 Hours	
Maria Williams	W	Env. Eng. Sr.	05/25/99 2.0 Hours	Solid Waste Implementation

Maria Williams	W	Env. Eng. Sr.	05/26/99 1.0 Hour	Solid Waste Implementation
Maria Williams	W	Env. Eng. Sr.	05/28/99 1.5 Hours	
Maria Williams	W	Env. Eng. Sr.	05/30/99 4.0 Hours	
Maria Williams	W	Env. Eng. Sr.	06/02/99 1.0 Hour	Waste Regulations
Maria Williams	W	Env. Eng. Sr.	06/04/99 8.0 Hours	Waste Regulations
Maria Williams	W	Env. Eng. Sr.	06/08/99 2.0 Hours	Waste Regulations
Maria Williams	W	Env. Eng. Sr.	06/09/99 2.0 Hours	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	06/11/99 2.0 Hours	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	06/14/99 1.0 Hour	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	06/17/99 1.0 Hour	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	06/22/99 2.0 Hours	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	06/23/99 2.0 Hours	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	06/23/99 2.0 Hours	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	06/25/99 8.0 Hours	Medical Waste Sampling

Maria Williams	W	Env. Eng. Sr.	06/28/99 1.0 Hour	Medical Waste Sampling
Maria Williams	W	Env. Eng. Sr.	07/09/99 4.0 Hours	ATC CME
Maria Williams	W	Env. Eng. Sr.	07/16/99 9.0 Hours	DCDC Solid Waste Staff
Maria Williams	W	Env. Eng. Sr.	07/30/99 8.0 Hours	Annual Reports
Maria Williams	W	Env. Eng. Sr.	08/09/99 4.0 Hours	ABEX Camp
Maria Williams	W	Env. Eng. Sr.	08/13/99 9.0 Hours	Grant Projects

Lawrence M. Farmer
INCORPORATED
Examiner of Questioned Documents

PERSONAL RESUME

Qualifying Experience:

1978-Present **Examiner of Questioned Documents,** Virginia Beach, VA Engaged in scientific examination of questioned documents with specialty in disputed signatures and questioned handwriting. Also skilled in examination of altered documents, medical records, typewriter identification and all phases of document problems. Photographic facilities include ultraviolet and infrared equipment for study and for preparing exhibits. Examinations are conducted for attorneys, state prosecuting attorneys, law enforcement officials and the general public. Appointments by the Court are welcomed. Detailed reports are prepared to specify the results of an examination, if desired. The reports and photographic exhibits have a dispositive effect. Extensive experience as an effective witness.

1954-1978 **United States Secret Service,** Washington, D.C., Richmond & Norfolk, VA
Special Agent and Special Agent in Charge. Handwriting comparisons were made on a daily basis while investigating the forgery of thousands of Government checks and bonds and in investigating threatening and anonymous letters to the President of the United States.

Education	**College of William and Mary** Williamsburg, VA Bachelor of Arts Degree, 1951
Training:	**Questioned Document School** United States Secret Service, 1964
Qualifications:	Can qualify in any court as an expert in the identification of questioned or disputed handwriting and signatures.
Personal and Professional References:	**Upon request.**
Fee Information:	Basic fee is $95 per hour for all services. Exact quotations can usually be offered in advance. Appropriate charges are necessary for travel expenses. When appointed by the Court the fee may be determined by the Court. Preliminary examinations can usually be conducted with photocopies or photographic copies of the documents, forwarded by mail, in order to reduce travel and minimize costs.

5317 Challedon Drive, Virginia Beach, Virginia 23462-4109 Phone: (757) 490-2914 · Toll Free: 1-800-4344-2914 · Fax: (757) 490-2915 · E-mail: LarryFarmer@worldnet.att.net

Lawrence M. Farmer, Incorporated
Examiner of Questioned Documents

5317 Challedon Drive,
Virginia Beach, Virginia 23462
Phone: (757) 490-2914

October 9, 2000

REPORT OF EXAMINATION

The purpose of the examination was to ascertain whether Kelvin J. Hurdle wrote the "No" response on a document which is described below where it is designated with a Q-1 prefix.

Q-1 Photocopy page, 11' X 8.5', with a copy of REPORT COVER SHEET, Tracking ID WP2000 1003, Response Date 8/24/00, From Michael Lawless Draper, Company Draper Lawless, with a Referring Date 7/28. Response Yes and Comment Ltr. Dtd 7/18; Response DEQ Ltr. 6/30/00. A circle has been drawn around the "Yes" response and a line drawn from the circle to more than one inch below the REPORT COVER SHEET where a circle is drawn around the questioned "No" entry.

The following documents were provided for comparison with the questioned Q-1 entry.

K-1 Two groups of documents, with labels, "Employee A" (5 documents) and "Employee A Additional Documents" (6 documents).

K-2 Two groups of documents, with labels, "Employee B" (12 documents), and "Employee B Additional Documents" (15 documents).

Appropriate examination and comparison was made of K-1 and K-2 and Q1. When this procedure was completed 1 formed the opinion set forth below.

It is my POSITIVE OPINION the questioned notation "No", on Q-1, was written by the author of K-2. This writer sometimes makes a conscious or deliberate stroke from the upper right corner of the "N" to the "o". Sometimes the mark is thin and it is not a deliberate stroke. It is a dragging mark.

The K-1 writer, Employee A, has a connection stroke that goes from the lower right corner of the "N" to the "o".

Examination of large writing samples of both writers will I am confident confirm the observations made in this Report of Examination. If testimony is desired it is requested that I be notified at the earliest possible date. All documents provided for use in the examination are enclosed with the original of this report.

Lawrence M. Farmer